

TRANSCRIPT

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

Inquiry into abuse in disability services

Melbourne — 19 October 2015

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Ms Kate Lahiff, Senior Adviser, Strategic Projects and Policy Unit, Victorian Equal Opportunity and Human Rights Commission.

The CHAIR — The committee would like to call the Victorian Equal Opportunity and Human Rights Commission. Welcome to the public hearings Ms Catherine Dixon, Director - Commissioner's Office, Ms Gudrun Dewey, Senior Advisor Human Rights and Ms Kate Lahiff, Senior Advisor, Strategic Projects and Policy Unit from the Victorian Equal Opportunity and Human Rights Commission. Thank you all for attending today.

All evidence at this hearing taken by the Committee is protected by parliamentary privilege as provided by the Constitution Act of 1975 and subject to the provisions of the Parliamentary Committees Act 2003 and other relevant legislation. Any comments you make outside the hearing will not be afforded such privilege. It is a contempt of Parliament to provide false evidence.

Recording of the proceedings will commence today and you will be sent a proof copy of the transcript and will be able to make factual and grammatical corrections if necessary.

I will hand over to you. Thank you very much.

Ms DIXON — Thanks for the opportunity to present. My name is Catherine Dixon and I'm the Director - Commissioner's Office at the Victorian Equal Opportunity and Human Rights Commission and today I'm joined by Kate Lahiff who is a Senior Advisor in our Strategic Policy and Projects area and Gudrun Dewey, a Senior Advisor in our Legal Unit.

What I thought would be helpful for the Committee today would be to provide a snapshot of the research that we've done and published last year called Beyond Doubt which relates to the experiences of people with disabilities reporting crime and to then outline some of the progress that we see that has occurred since we published that report and, thirdly, to pick up on some of the key themes of the committee's inquiry and some of the questions you have asked, particularly around human rights safeguards and workforce culture and a registration scheme.

So to begin with a snapshot, this report that we produced, Beyond Doubt, we produced in accordance with our research function under the Equal Opportunity Act and we instigated that because of concerns that came out of our disability reference group. We wanted to look at what factors impact on the initial contact between a person with disability and the police when a crime is reported. We also wanted to look and get a better understanding of the environments in which crimes against people with disabilities are occurring and how this - these environments - affect the reporting process, and then identify what was working and not working across the justice sector. Whilst the focus was on police the research did touch on, as well, issues arising in the disability services sector and then more broadly the justice sector as well. So it grew, if you like.

Some of the main findings that have come out of this report firstly relate to the fact that whilst the data is limited there are national and international studies that say that people with disabilities are more likely to be victims of crime than the general population, that crime is most severe for women, people with cognitive impairments and people with communication disabilities. People with disabilities can be at greater risk of being victims of crime in disability service settings, particularly residential settings, given those services are outside of the public domain. Some of the other key findings that came out of our research were about barriers that prevent people with disabilities from reporting crime as well as those who care for them.

These barriers include a lack of access to information to people about their rights and the obligations of disability support staff. People may not identify particular conduct as constituting a crime, particularly when violence has become normalised in their service settings.

We also heard from people about the emotional toll of reporting. So feelings of shame, self-blame, fear that their family will find out, the emotional strain of retelling stories, those are significant barriers.

There was a fear of negative consequences. People not being believed, was a very strong concern that came through our research, or of losing support, particularly if the alleged offender provides that support. One of the strongest findings of the study is that people with disabilities fear that they will be seen as lacking credibility in the system when they report a crime to police.

The other impeding factors are previous negative interactions with police, particularly where police may have applied their powers under the Mental Health Act.

There are also barriers to service providers and carers reporting crimes against people with disabilities and some of the themes there are an inability to actually identify and respond to incidents of abuse and neglect, a failure to follow incident reporting guidelines and this is where we heard that crimes against people with disability were incorrectly categorised as internal incidents. There are also inadequacies of resources and guidelines for staff and the justification of violence against clients being behaviour management and, as I said before, a normalisation of violence as well, particularly violence between clients.

A further finding related to barriers that prevent a robust service investigation and these included inadequate record keeping, variable communication and interview skills of investigators, a lack of funded advocacy services, the focus of an investigation being about whether the allegation is substantiated or not and missing the policy aim of actually minimising trauma to the person. Also, privacy concerns trumping the gathering of evidence, and industrial relations concerns, being another impediment.

So in summary, in relation to the first part of what I wanted to talk about today in relation to Beyond Doubt, we submitted that stronger safeguarding is required and we think there is a clear need to address gaps in safeguarding people's rights and to strengthen and extend the monitoring and oversight regime. We say that independent oversight and monitoring is needed. There is the need to foster an open and ethical and accountable culture. There is a need to build the capacity of clients, carers, staff, managers to actually identify and respond to situations of abuse and neglect, treating crimes as crimes and ensuring that services act when abuse is reported.

We also saw the need for disability advocacy in peer-led education, better recruitment practices, proper and ongoing supervision and monitoring and a comprehensive registration scheme, which I will speak about in a minute.

That is the first part of what I wanted to talk about today and the second was what's happened since we published the Beyond Doubt report. This isn't, by any means, comprehensive but a snapshot of some of the key areas. There is, of course, the Disability Worker Exclusion Scheme. Subject to evaluation we think this should be broadened. I am happy to talk about that in a minute. We know that Victoria Police and the Department of Health and Human Services have worked together on a joint plan to develop practice guidelines for reporting, identifying standards of practice and investigation of crimes. We understand that the department have engaged Scope to develop communication tools for people with cognitive and communication disabilities to assist them to identify and report crime and engaged Scope to deliver training for disability staff. We welcome that work and it goes some way to meeting some of the recommendations in our report. We're also on a project advisory group for that work so we're pleased to be involved in that. We also have worked with Victoria Police and Scope to develop an easy English resource for reporting crime to police. That will be available at police stations and we hope to disseminate the resource more broadly as well throughout disability services and OPA's Community Visitor's Program and advocacy groups. We have also been working with the Judicial College to develop a disability access bench book, which might go beyond the scope of this inquiry but that is about making the courts more accessible for people with disabilities. So there is more to do but that's a snapshot of some of the work that's been done since our report was published.

The third area I wanted to mention briefly, and I can develop more if there are questions, relates to some of the issues that have emerged from stage 1 of your inquiry. Firstly, with regard to human

rights and safeguards, our submission there is that the NDIS apply the same human rights protections across Australia by incorporating the Convention on the Rights of Persons with Disabilities. That could potentially be annexed, for example, as a schedule to the NDIS legislation. We think it's critical that a human rights framework shapes the work of the new NDIS and that's one way of doing it that would provide consistency across Australia. The other option would be that the framework ensures that the human rights Charter in Victoria at least continues to afford human rights protection to people with a disability in Victoria. That means the Charter would apply to the NDIA when making decisions in Victoria and to NDIS service providers in Victoria.

That's our submission about human rights and safeguards, to make sure - that framework is not diminished in the move to the NDIS.

The second response to questions that you've raised that we wanted to touch on was in relation to whether a Disability Worker Registration Scheme should be established. That was an important issue that came out of our research in Beyond Doubt. We considered that a registration scheme would bring many benefits and it would ensure a comprehensive risk analysis to determine a person's suitability to work at a disability service. We think that criminal penalties for people who seek to work or volunteer contrary to conditions attached to registration would be a powerful tool for compliance. We know that such a scheme would be extremely broad in nature so one of the things that we recommended was further consultation, particularly with people with disabilities and potentially a feasibility study. We know there are models we can look to, whether it is Victorian Institute of Teaching, AHPRA or the Working With Children Checks and we think the exclusion scheme is a good start but we think it could be broadened to other settings but also more broadly to a registration scheme.

The final theme that we wanted to touch on is the subject of workforce culture. We know that has emerged as a really important theme in this inquiry. Our thoughts on developing and improving the workforce culture to encourage people to report crime and to make sure that abuse is acted upon is firstly that the changes need to occur at a number of levels: industry-wide, organisational and individual. One strategy alone is not sufficient to effect cultural change. Our submission to this inquiry focussed on training for services staff on preventing, recognising and responding to and reporting violence, abuse and neglect but we also say that staff need proper supervision and opportunities to debrief combined with training. We think this could contribute to a culture where reporting abuse against clients is understood to be essential in the workplace and when staff know that their conduct will be monitored. If staff are supervised it means they have an opportunity to address issues as they arise as to what the most appropriate strategy will be. In our experience, managers play a really critical role in promoting standards of behaviour through discussion, leadership and modelling of that behaviour. We think that is critical.

The other area that is important to changing workplace culture is bystander action, so encouraging third parties - so not a perpetrator or a victim - to actually speak up and the way that you can encourage bystander action is to develop and promote policies that specifically protect bystanders from victimisation. You promote standards of behaviour where each team member is actually encouraged to assume responsibility and take action and you develop clear, responsive and consistent reporting procedures so people know if they do speak up something will happen as a consequence.

That is all that I wanted to touch on today but we're happy to answer further questions and we are considering making a second submission to the inquiry as well.

The CHAIR — Thank you very much, Catherine. I appreciate that. Yes, you have done some serious work with the Beyond Doubt report, which has informed the committee already around some of the recommendations we made in stage 1. Just a couple of questions, in relation to the normalisation of abuse that you referred to. In trying to understand what we mean by "normalisation of abuse", obviously there are different levels of abuse that society, in general, might accept as

normal. However, I think when we are talking about people who are particularly vulnerable or do not have the capacity to protect themselves this normalisation of abuse is increasingly problematic. What do you think providers can do to support a disability workforce culture that does not tolerate any abuse, as in zero tolerance, and then going on with that, of course, is neglect or exploitation?

Ms DIXON — One of the issues that came up for us with normalisation of abuse was that our research indicated, for example, that there was more likely to be a reporting of crime where it was client violence in relation to staff but not so much client violence against other clients. So that is an area of concern and part of our thinking is that it is seen as somehow normal that clients may be violent towards other clients and that is something that we think is very important to not accept. That is one area around normalisation of violence that we wanted to raise. The other is that in our research, it was clear that sometimes abuse arose in the context of behaviour management and that similarly for disability workers, it isn't acceptable to be using abuse or violence as a way to manage behaviour and particularly where clients have communication difficulties, and sometimes we saw from our research that restrictive practices were used and may not have needed to be used simply because not enough had been done in relation to improving communication with clients. So those are areas that arose in our research.

In terms of the workforce culture, the key points we have made are about training, supervision, the role of managers and the promotion of bystanders. They are some of the areas where we think change can happen where this isn't seen as normal and that there's just a very clear message from the very top that these practices won't be accepted, but my colleagues might have something further to say on that.

Ms LAHIFF — I'd just add, through the research that we saw that the normalisation of violence leads to people seeing violence as an incident that has happened within a service rather than seeing it as crime. We've heard examples of service workers being asked to identify or name a certain behaviour and it often was categorised as behaviour management rather than being able to see that it was a crime. So we suggest that further training and instruction on what constitutes a crime is needed both for workers but also for people who participate in those services.

The CHAIR — Can you give an example of the types of incidents that are sometimes downgraded or sometimes ignored by providers?

Ms LAHIFF — I'm just struggling to remember if this is from our research or from other people's research that I read. Things like the use of restrictive practices outside of a behaviour support plan, including physical restraint, can constitute an assault, whereas in a service it could be seen as behaviour management.

The CHAIR — You mentioned Victoria Police and the role they have played in some of the examples that you have given that people with disabilities have had a negative experience in the past with approaching police or making complaints or et cetera. What role do you think the Victoria Police can play to improve the system for reporting abuse of people with a disability?

Ms LAHIFF — We made a strong statement that under the Equal Opportunity Act Victoria Police need to respond to reports of crime towards people with disabilities in the same way they would respond to any person making a report. We heard examples of police being called to services and supporting staff in essentially calming down someone who had experienced assault or abuse rather than investigating or taking a report as a report of crime. In the first instance I think that is one level - I am not by any means saying that is all police members, but we did hear examples of practice that would constitute discrimination essentially under the Equal Opportunity Act. So in the first instance that is one area that Victoria Police needs to ensure doesn't happen.

Then the other areas we highlighted were further down the stream. So where a report has been taken, ensuring investigations are carried out in a way that maximises their chances of leading to prosecution.

The CHAIR — One last question from me, in regards to the Evidence Act that was changed in South Australia to support people who have communication difficulties, do you think that that would strengthen the Victorian system if there were changes to the Evidence Act?

Ms DIXON — I might have to take that question on notice.

The CHAIR — I understand that you have mentioned that there are already problems within the justice system, and it is really a little bit outside of our remit, but if you have issues with (A) police reporting and investigation, then you have problems with the justice system in terms of protecting people who have, in particular, communication difficulties. That might be one way to...

Ms DIXON — That is an issue that we're looking at in terms of the disability access bench book that we're working on with the Judicial College, is how people with disabilities can be better accommodated in giving evidence and particularly the perception that has developed that somehow victims aren't as credible as others just because of the way they communicate and changing those stereotypes. But we're happy to take on notice that question about the Evidence Act and provide further information to the Committee on that.

The CHAIR — Great, thanks.

Ms COUZENS — Thanks for coming along today. We appreciate that. You talked about the role of police in investigating, or maybe not investigating, reports, are you aware of any that have related to charges being laid or ending up in court?

Ms DIXON — Any examples in our research of people's experiences?

Ms COUZENS — Yes. So where there has been abuse has there been any follow through to charges or court?

Ms DIXON — Many of the case studies that came up were people that gave up along the way because the system was so difficult and they may have got part way through and then found it too much pressure and just not enough accommodation of their disability, for example, in the process.

Ms COUZENS — So you're not aware of any apart from Yooralla.

Ms DIXON — No, aside from Yooralla.

Ms COUZENS — What's your view of the Community Visitors Scheme? Do you think that's effective?

Ms DIXON — The research that we undertook did highlight the importance of Community Visitors. We note that OPA has recommended the need for a national evaluation of the role and we would support that. We think that if the scheme continues, it is important that people are adequately skilled and supported to do the role.

Ms COUZENS — You mentioned in your research issues relating to industrial relations. Can you just expand on that a little bit?

Ms DIXON — There were examples that were given to us where providers didn't act as you'd expect in relation to complaints because of concerns about the industrial process when it came to

potentially - for example terminating someone's employment. They were the sorts of examples where industrial relations concerns came up.

Ms COUZENS — So given there are laws about instant dismissal and all that, obviously they don't follow that?

Ms DIXON — I think, perhaps, it was perceived that they couldn't act in the way that they should have because of those industrial hurdles when, in fact, probably that was not the case.

Mr FINN — On the issue of police - this concerns me enormously to hear this, police not responding to reports or at least not doing the right thing when they get there - is there any evidence that you have discovered that these matters have been reported to ethical standards within VicPol or, indeed, been raised with the Chief Commissioner's Office?

Ms DIXON — The police were certainly involved with us in this research and when we released this report, the Commissioner of Police accepted the recommendations in the report and we have been working with the police in order to progress the recommendations. There is certainly an acknowledgement of the police letting down people with disabilities in this area and needing to do something about it.

Mr FINN — Are you aware of any of the individual incidents that you've discovered actually being taken further with the police in terms of reporting it to some of these internal bodies within the police force or, as I say, by the Chief Commissioner's Office itself?

Ms LAHIFF — I'm not aware of anyone and it would be fair to say through the research - often the people we spoke to were learning about what their rights or options for taking a complaint further would be. I think it's also fair to say that once people are denied the initial right of making a report or having something investigated their willingness to pursue something further is usually diminished, particularly if they haven't been believed by the police in the first instance. So I don't know if people following their involvement with us took it further, and I don't know of any examples where people had a report refused by police and then they have gone to either the Chief Commissioner or the Professional Standards Board.

Mr FINN — On the issue of whistleblowers, we have heard already this morning that the current whistleblowers act might not be enough to protect whistleblowers, I'm just wondering if your body has any thoughts on what we could do to prevent the rights of whistleblowers - indeed, to protect them, in what is a fairly important role that the individual whistleblowers have?

Ms DIXON — We haven't considered that issue in terms of the legislative framework that exists for whistleblowers. We have looked at it more in terms of workforce culture and creating an environment where if someone does speak up they are supported in doing so, they are not victimised, and you have a specific policy that addresses that and encourages people and that is developed through training and through really making sure that reports are then actioned so that people think, "It does make a difference if I do speak up." That is the framework we focussed on rather than a legislative one.

Mr FINN — Do you think a legislative one might be of assistance in protecting people who do raise these sorts of issues?

Ms DIXON — We haven't considered it and we're happy to again take that on notice but we'd probably need to do a bit more thinking before we gave a view on that.

Ms KEALY — Thank you very much and thank you so much for coming in today to share with us your thoughts. It does help us to inform our report and hopefully our recommendations will be taken on board by the Government going forward and will give us the stronger system we need

when the NDIS is rolled out. I did want to note that it is really interesting, and I think it is very positive, to hear you referring to some of these instances as crimes rather than requiring an incident report or even that term of 'abuse' which we can become desensitised to over time. There are so many different abuse types that you can go into. I think calling it a crime is a really positive step in identifying this and calling out those actions for what they really are. Thank you very much for bringing that different view to the table.

I just wanted to talk through some of the comments that we've heard earlier - comments have been raised earlier but in the first stage of the report it was about the development of an independent oversight body. So during the interim period of the transition to the NDIS from 2016-2020 do you believe we should create a new independent oversight body to handle complaints as well as workforce screening and accreditation?

Ms DIXON — Our position in relation to that is that at the Commission we would reiterate through our research and experience the importance of independence and of effectiveness when it comes to oversight and I think it is worth referring to the Convention on the Rights of Persons With Disabilities here and I will just quote one of the articles there that says - Article 16(3), "In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programs designed to serve persons with disabilities are effectively monitored by independent authorities." So for us the key words there are 'independent' and 'effective'. We haven't done particular research around this and we know the Ombudsman has and - we certainly note what the Ombudsman said about the gaps in the existing system and what this inquiry has published as well in stage 1 about that. So we would support having the most effective system where there aren't gaps. We found in our research that there was a lack of clarity within services about when and how to undertake internal investigations and actions including issues in relation to a criminal threshold in substantiating allegations. This leads to inconsistency in response. Our research showed there was a lack of clarity. We also learnt through our research that despite the comprehensive policies and guidelines that exist, that require services to report to police and to report incidents, we heard that the practice on the ground really did vary so for those reasons we would support independent oversight that would be more effective in monitoring and safeguarding.

Ms KEALY — There has been some suggestion that your organisation might be the body that takes on a stronger safeguarding approach. How do you feel about that? Is that something you have considered any further or is that something that you see fits into your scope of your works and do you have the capacity to do it?

Ms DIXON — We noticed in your first report that the kind of responsibilities and powers you thought this body should have would be complaint handling, managing and investigating reportable serious incidents, oversight of restrictive practices, the Community Visitors Program and the potential for paid inspectors. That is a really broad ambit and our role really is to make sure that people are aware of their rights and obligations under equal opportunity legislation and under the human rights Charter and the under the Racial and Religious Tolerance Act. So our functions really revolve around that, whether it is research, education or complaint handling. We don't have the expertise when it comes to service delivery in the disability sector so we don't think we would be the appropriate body to undertake that work but we support your recommendation nonetheless.

Ms KEALY — I just - in terms of that response do you see that you do have an opportunity to build on your current role in terms of research, education and complaint handling or do you think that that is a good group of elements to really focus your energy on and to add anything else to that might actually become too onerous or become a distraction from the core elements you are focussing on?

Ms DIXON — At the moment our resourcing would only extend to those areas. One of the things that is interesting in the human rights landscape at the moment is the potential for a better complaint handling process for human rights complaints. There's been an independent review of the

human rights Charter that has been done by Michael Brett Young and he has published a number of recommendations from that review and one of his recommendations is that the Commission has an increased role when it comes to complaint handling for human rights complaints and has a dispute resolution service around that. That's where we see our role potentially developing in that human rights space, if the Government accepts those recommendations, which would still leave the Ombudsman to have a role in investigating systemic and serious allegations of human rights abuses. So that's probably the way that our role will develop in the human rights space in relation to the human rights Charter, if those recommendations are accepted.

Ms KEALY — In order to undertake that enhanced and expanded complaint handling ability you would need further resources to achieve that?

Ms DIXON — Yes. That is part of the recommendations of that review that we be resourced and given those functions. The idea is that we would provide dispute resolution in that context and if the complaint didn't resolve, an individual could go to VCAT to have their complaint adjudicated. As I said, the Ombudsman would still have the role of investigating serious and systemic human rights issues. We will see whether all of that evolves in the way that we hope but it's probably where we see an expansion of our functions.

Ms KEALY — Thank you very much.

The CHAIR — Just one last question in relation to the human rights Charter here in Victoria and, perhaps, incorporating the protection of people with disabilities within that; it doesn't already have that protection, does it?

Ms DIXON — The human...

The CHAIR — The Charter.

Ms DIXON — There are a number of rights of people with a disability. The right to equality and not be discriminated against. There are a number of rights that would apply to people in disability service settings, for example, privacy, freedom of movement, the right not to be subjected to inhuman, degrading treatment.

The CHAIR — Do you think it is strong enough?

Ms DIXON — I think one of the weaknesses at the moment relates to the way that the rights are enforced and one of the things that I was mentioning earlier is hopefully some of the recommendations around better enforcement of the rights will be accepted by the Government as part of the 8-year review of the Charter. I think it could be stronger. At the moment, you can only really raise a human rights complaint. You can raise a complaint directly with the Ombudsman but in terms of going to court about a matter, you have to have an existing course of action and then tie your Charter argument to it which is cumbersome for people and not accessible. Having the ability to go to us for dispute resolution and then to VCAT to pursue a matter if it is not resolved, we think, is important for people with disabilities and others.

The CHAIR — Do you think the current system for people with disabilities is already quite confusing in terms of the process they have to go through should there be a complaint around abuse et cetera or an incident that has escalated? We have heard that currently the system is very difficult for some people to actually manoeuvre through. Do you think adding another layer in terms of the Ombudsman already exists to do this, so having another layer through the Human Rights and Equal Opportunity Commission, do you think that is going to sort of muddy the waters even more?

Ms DIXON — It is a weighing up of people having choice, of trying to decide the best forum to resolve the issue for them and being really aware of their rights in this context. As you know, our

research indicates that people do not understand their rights or the process, including where they can prosecute those rights and get a remedy. However, I certainly take on board what this inquiry has found and the Ombudsman has found in terms of lack of clarity and in some ways the need for a one-stop shop if you like.

The CHAIR — Thank you so much for your time today. We really appreciate it and we look forward to your submission to stage 2 perhaps addressing some of the questions that were asked today that you might want to come back to us on. Thank you very much. We appreciate it.